Demystifying WTO and Development

Frequently Asked Questions

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Centre for Trade & Development

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Section I

Frequently Asked Questions (FAQs)

1. What is the WTO? How has it evolved?

The World Trade Organisation (WTO) is an international organisation dealing with the rules of trade between nations. There are a number of ways of looking at the WTO. It is an organisation for liberalising trade, a forum for governments to negotiate trade agreements and a place for them to settle trade disputes.

The WTO came into force on 1 January 1995, but its trading system is half a century older. Since 1948, the General Agreement on Tariffs and Trade (GATT) had provided the rules for the system. It did not take long for the General Agreement to give birth to an unofficial, *de facto* international organisation, also known informally as GATT. Over the years GATT evolved through several rounds of negotiations. The last and largest GATT round was the Uruguay Round which lasted from 1986 to 1994 and led to the creation of the WTO. Whereas GATT had dealt mainly with trade in goods, the WTO and its agreements now cover trade in services, inventions, creations and designs (intellectual property).

2. How is the WTO different from GATT?

Before 1995, in the absence of a permanent institutional framework for the multilateral trading system, the expression 'the GATT' used to refer to both the actual General Agreement on Tariffs and Trade and to the framework in which the multilateral trade negotiations took place. Since 1 January 1995, the World Trade Organisation has constituted the permanent institutional framework for the multilateral trading system. Unlike the GATT, which was not an official international organisation, the WTO is an international organisation with a Secretariat. GATT no longer exists as an organisation.

While the GATT had mainly dealt with trade in goods, the WTO and its agreements also cover disciplines on trade in services and intellectual property rights.

3. Does GATT no longer exist? How is GATT 1947 different from GATT 1994?

Although GATT as an organisation no longer exists, the agreement under the original GATT along with its amendments till 31 December 1994 is a part of the WTO family of agreements. The original GATT of 1947 along with all amendments till 31 December 1994 is commonly referred to as GATT 1947.

GATT 1994 comprises the following: (1) GATT 1947; (2) Decisions taken under GATT 1947 up to 31 December 1994; (3) Understandings reached in the Uruguay Round in six areas; and (4) Tariff schedules and the manner of implementation of these schedules as agreed in the Uruguay Round.

4. What are the basic principles of the WTO?

Although the WTO agreements are lengthy and complex because they are legal texts covering a wide range of activities, two fundamental principles run through all of these documents – 'Most Favoured Nation' (MFN) Treatment and National Treatment. These principles are at the foundation of the multilateral trading system.

MFN Treatment: Under the WTO agreements, countries cannot normally discriminate between their trading partners. A grant of a special favour (such as a lower customs duty rate for one of their products) to one country has to be extended to all other WTO members. This principle is known as MFN treatment. It is so important that it is the first article of the GATT, which governs trade in goods. MFN treatment is also a priority in Article 2 of the General Agreement on Trade in Services (GATS) and Article 4 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), although in each agreement the principle is handled slightly differently. The MFN rule says that every time a country opens up a market for a particular good or service, for example by lowering a trade barrier, it has to do the same for all its trading partners.

Some exceptions are allowed. For example, countries can set up a free trade agreement that applies only to goods traded within the group—discriminating against goods from outside, or they can give developing countries special access to their markets, or they can raise barriers against products that are considered to be traded unfairly from specific countries. In services, countries are allowed to discriminate in limited circumstances, but the agreements permit these exceptions only under strict conditions.

National Treatment: Imported and locally-produced goods should be treated equally, at least after the imported goods have entered the market. Th

same should apply to foreign and domestic services and to foreign and local trademarks, copyrights and patents. This principle of 'national treatment' (giving products of other countries the same treatment as one's own products) is also found in all the three main WTO agreements (Article 3 of GATT, Article 17 of GATS and Article 3 of TRIPS), although once again the principle is handled slightly differently in each of these.

National treatment applies only once a product, service or item of intellectual property has actually entered a country's market. Therefore, charging customs duty on an import is not a violation of national treatment even if locally produced products are not charged an equivalent tax.

5. Who are the member countries of the WTO? How do countries become members of the WTO?

The WTO has 148 members, together accounting for 90 percent of world trade. These members are mostly country governments, but can also be customs territories. Only a quarter of the countries are developed countries. The rest are developing countries, least developed countries (LDCs) and customs territories. There are nearly 30 applicants negotiating to become members.

Customs territories are countries working together to form alliances such as customs unions, free trade areas or common markets. Often they have just one spokesman or negotiating team representing the alliance at the WTO. The biggest such group is the European Union (EU) and its 25 member-states. The EU is a WTO member in its own right, even though each of its member countries is also a member of the WTO.

Any country or customs territory, which is autonomous as far as trade is concerned, can join the WTO. The application process has four stages:

(1) First, the government applying for membership has to describe all aspects of its trade and economic policies that have a bearing on WTO agreements. This is submitted to the WTO and examined by a working party made up of all WTO members.
(2) After policies have been examined, parallel bilateral talks begin between the prospective new member and individual countries. These talks cover tariffs and access to markets, and other policies in goods, services and intellectual property rights (IPRs). Though they are negotiated bilaterally, a new member's commitments apply equally to all WTO members under normal non-discrimination rules.

(3) Once the working party has completed its examination of the applicant's trade system, and the bilateral negotiations are complete, the working party finalises the terms of membership in a draft membership treaty (called the 'protocol of accession') and lists the new member's commitments.

- Finally, the overall report, the protocol and lists of commitments are presented to the WTO General Council. If a majority of WTO members vote in favour of the country joining the WTO, the country can sign the protocol and 'accede' to the WTO.

In many cases, the country's own government has to ratify the agreement before membership is complete. This whole process can take more than 10 years; Nepal's membership took 12 years.

Many countries become 'observers' at the WTO proceedings before they become members. Apart from the Vatican, observer nations must start the process of becoming members within five years of becoming observers.

Current observer countries include Afghanistan, Algeria, Belarus, Bhutan, Bosnia and Herzegovina, Ethiopia, Iran, Iraq, Kazakhstan, Lao People's Democratic Republic, Lebanese Republic, Libya, Russian Federation, Saudi Arabia, Serbia, Seychelles, Sudan, Tajikistan, Tonga, Ukraine, Uzbekistan, Vietnam and Yemen.

6. What are the benefits of joining the WTO?

The main benefit of membership in the WTO is the right not to be discriminated against, in its trade with other members of the WTO. This principle of non-discrimination in trade is fundamental to the WTO and set down in the MFN and national treatment clauses, the two basic principles of the WTO.

In case a country is not a member of the WTO, it has to conduct international trade with other countries under bilateral agreements which may need to be renewed periodically and whose terms and conditions may also change. Membership of the WTO ensures that the country concerned undertakes international trade transactions with other WTO member-countries under a predictable and stable trade regime.

Another important benefit of membership is that it gives a country the right to take part in WTO meetings and trade negotiations, and therefore the opportunity to shape future international trade to its advantage.

7. What role do NGOs, people bodies and businesses have in the WTO?

Private businesses, NGOs or advocacy and lobby organisations are not a part of the WTO and do not officially participate in WTO negotiations. All businesses and non-business organisations have to work through their own governments if they want to change any of the agreements.

However, subject to certain conditions, NGOs are permitted to submit 'amicus briefs' (friends-of-the-court submissions) to dispute settlement panels.

8. What are the main agreements signed by all member countries under the WTO?

The WTO agreements cover goods, services and intellectual property. They spell out the principles of liberalisation and the exceptions permitted. They include commitments of individual countries to lower customs tariffs and other trade barriers, and to open services markets and keep them open. They set procedures for settling disputes. They prescribe special treatment for developing countries. They require governments to make their trade policies transparent by notifying the WTO about laws in force and measures adopted, and through regular reports by the WTO Secretariat on their trade policies. . These agreements are often called the trade rules of the WTO, and the WTO is often described as 'rules-based', a system based on rules. But it is important to remember that the rules are actually agreements that governments have negotiated.

The basic structure of the WTO agreements is shown in the table below.

Umbrella	**Agreement Establishing WTO**		
	Goods	Services	Intellectual property
Basic principles	**GATT**	**GATS**	**TRIPS**
Additional details	Other goods agreements and annexes	Services annexes	
Market access commitments	Countries' schedules of commitments	Countries' schedules of commitments (and MFN exemptions)	
Dispute settlement	**Dispute Settlement**		
Transparency	**Trade Policy Reviews**		

9. How are disputes settled in the WTO? What happens if a country does not abide by a WTO agreement?

Dispute settlement is the central pillar of the multilateral trading system. Without a means of settling disputes, the rules-based system would be less effective because the rules could not be enforced. The dispute settlement procedure of the WTO underscores the rule of law and makes the trading system secure and predictable. The system is based on clearly-defined rules, with timetables for completing a case. First rulings are made by a panel and endorsed (or rejected) by the full membership of the WTO. Appeals based on points of law are allowed.

The reports of the panel and Appellate Body are adopted by the Dispute Settlement Body (DSB) of the WTO through the process of reverse consensus, whereby a report is adopted unless all members agree to reject the report. In case the panel/Appellate Body concludes that the country complained against has not complied with its WTO obligations, the country is required to conform to the relevant obligations within a 'reasonable period of time'. In case the defaulting country is unable to comply with the WTO obligations within the 'reasonable period of time', the complaining country may retaliate against the defaulting country, after obtaining authorisation from the DSB. In certain circumstances, the parties to the dispute may enter into a compensatory agreement pending compliance with the panel/Appellate Body recommendations.

10. How can I obtain more information on the activities of the WTO?

The WTO maintains a website at http://www.wto.org. It contains a wealth o[f] information about WTO agreements and the structure and work of the organisation. A number of WTO documents can be downloaded from the website[.] In addition, the Information and Media Relations Division of the WTO Secretariat is available to answer requests for information from the general publi[c] and media. The Information and Media Relations Division can be contacted a[t]
WTO, Centre William Rappard, 154 rue de Lausanne,
1211 Geneva 21, Switzerland, tel: (41 22) 7395111,
fax: (41 22) 7395458.

Section II

Glossary

Ministerial Conference: A Ministerial Conference is the highest authority in the World Trade Organisation (WTO) structure and takes decisions on all matters under multilateral trade agreements. Since its inception in 1995, the WTO has held five Ministerial Conferences – in 1996 at Singapore, in 1998 at Geneva, in 1999 at Seattle, in 2001 at Doha and in 2003 at Cancun. Hong Kong, China is scheduled to host the sixth Ministerial Conference from 13-18 December 2005.

General Agreement on Tariffs and Trade (GATT): One of the three Bretton Woods organisations created after World War II to ensure a stable trade and economic world environment. The International Monetary Fund (IMF) and World Bank are the other two bodies of the Bretton Woods system. GATT functions as the foundation of the WTO trading system, and remains in force, although the 1995 Agreement contains an updated version of it to replace the original GATT 1947. However, GATT as an organisation no longer exists.

Doha Work Programme: The work programme of the WTO members initiated by the Doha Ministerial Declaration is commonly referred to as the Doha Work Programme. The Doha Ministerial Declaration and the WTO General Council Decision of 1 August 2004 constitute the framework of the current trade negotiations. The Doha Declaration prescribed only broad objectives in agriculture and Non-Agricultural Market Access (NAMA). The decision of 1 August 2004 decision prescribes specifics in terms of directions of commitments and alternative approaches to achieve the objectives.

Plurilateral Agreements: While WTO members subscribe to all WTO agreements after the Uruguay Round, there remained four agreements, originally negotiated in the Tokyo Round, which had a narrower group of signatories and are known as 'plurilateral agreements'. The four agreements are on (1) trade in civil aircraft, (2) government procurement, (3) dairy products and (4) bovine meat.

Agreement on Trade-Related Intellectual Property Rights: Sets the

minimum level of protection to various forms of intellectual property. TRIPs deals with copyright and related rights (i.e. rights of performers, producers of sound recordings and broadcasting organisations); geographical indications (including appellations of origin); industrial designs; integrated circuit layout-designs; patents (including the protection of new varieties of plants); trade-marks; and undisclosed or confidential information (including trade secrets and test data). TRIPs also specifies enforcement procedures, remedies and dispute resolution procedures.

Trade-Related Investment Measures: Governments may impose conditions on investment, some of which could be trade-related. For example, a government may prescribe that investments can be made in a firm, provided the firm exports certain proportion of its production. This is a trade-related condition.. The Agreement on Trade-Related Investment Measures (TRIMs) covers conditions on investment related to trade in goods.

GATS: General Agreement on Trade in Services (GATS), which provides a framework to regulate trade in services.

General Council: The day-to-day work of the WTO in between Ministerial Conferences is handled by the General Council comprising all the WTO members. The General Council acts on behalf of the Ministerial Conference on all WTO affairs. It meets as the DSB and the Trade Policy Review Body to oversee procedures for settling disputes between members and to analyse their trade policies.

Single Undertaking: The principle in WTO multilateral agreements meaning almost every item of the negotiation is part of a whole and indivisible package and cannot be agreed upon separately. Nothing is agreed upon until everything is agreed upon. The current negotiation on the Dispute Settlement Understanding of the WTO is outside the single undertaking.

Enabling Clause: The Enabling Clause, officially called the 'Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries', was adopted under GATT in 1979 and enables developed-country members to give differential and more favourable treatment to developing countries. The Enabling Clause is the legal basis under the WTO for the Generalised System of Preferences.

Harmonisation Code System (HS Code): A system of progressively specific identifiers for a commodity. For example, concentrated frozen apple juice is assigned a 10-digit identifier. This number is an aggregate of a series of

codes starting with a broad category assigned a two-digit identifier described as Preparations of Vegetables, Fruit, Nuts etc. It is then assigned a four-digit identifier described as fruit juices and vegetable juices etc. The six-digit identifier is described as apple juice.

Applied Tariff: Actual rate of customs tariff levied on a product.

Cairns Group: Group of nations that export agricultural products lobbying for liberalisation in agricultural trade. Formed in 1986 in Cairns, Australia. Current membership is of Argentina, Australia, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Guatemala, Indonesia, Malaysia and New Zealand.

Doha Round: Ongoing multilateral trade negotiations that started in Doha, Qatar, in 2001. The agenda agreed to here, called the Doha Work Programme, is designed to meet the needs of developing countries.

Hong Kong Ministerial: Sixth Ministerial Meeting of the WTO to be held in Hong Kong, during 13-18 December 2005.

Import Tariff: Tariff a country levied on imports by a country.

July Package: The Doha Declaration prescribed only broad objectives in certain areas like agriculture and NAMA. The Decision made on 1 August 2004 by the General Council prescribes specifics in terms of directions of commitments and alternative approaches to achieve the objectives, and is commonly referred as the July package

Market Access: Permission to a foreign product to enter a domestic market and compete with a domestic product on a non-discriminatory basis.

Rules of Origin: Set of rules that determine the country in which a product is deemed to have originated.

Subsidies: Financial contribution by a government to support a particular business or activity.

Section I

Frequently Asked Questions (FAQs)

Q 1. Can trade in agriculture play a role in poverty reduction?

Yes, trade in agriculture can play a very critical role in poverty reduction because a huge population across the globe depends largely on agriculture. According to the World Bank about 40 to 60 percent of the poorest in the developing world live in rural areas and are dependent primarily on agriculture for their livelihood. Though a majority of agricultural producers in poor countries produce for self-consumption and the domestic market, a significant proportion of farmers in developing countries produce for the export market. These export markets can stimulate production in developing countries and hence enable the farmers of these countries to earn more. The share of developing countries in agricultural products has improved from 39 percent to 42 percent and has increased in value terms from US$ 83 billion to US$ 147 billion between 1990-2003. An increase of just one percent in world export market share could translate into a one-fifth increase in average income and an increase in foreign exchange earnings by US$ 70 billion per year in Sub-Saharan Africa.

Further, there are many countries in the Asia Pacific region and South Asia (Thailand, Vietnam and India) whose agricultural exports are more than agricultural imports (net exporters of agricultural goods). These developing countries have historically been competitive in agricultural trade and share more than 50 percent of rice trade. Vietnam is one of the developing countries that reduced poverty and improved health standards. This bears a strong correlation with trade gains in agriculture. In these countries, a significant proportion of the population is involved in agricultural production. Hence, increasing international trade and thriving export markets could act as stimulants for the growth and development of the farmers in these countries.

Q 2. What are distortions in agricultural trade and how do they affect developing countries?

Distortions in trade are caused by policies and practices in global trade which

purposively change the volume and price of the commodity in trade. During the Uruguay Round, two aspects of trade intervention were considered distortionary: (1) market barriers that insulate countries from global competition and (2) subsidies that reduce the cost of production and transaction of traded commodities, thereby depressing global prices artificially. The Agreement on Agriculture (AoA) came up with 'commitments' to remove various types of distortions and there was improvement in market access with most countries tariffying their import regimes and many countries extended minimum market access. In terms of removing subsidies there was an effort by all countries to notify the extent of subsidies each country gives in agriculture and follow the schedule of commitment. And in reality both these distortions prevail in the global trade scenario. In the latest Common Agricultural Policy (CAP) the European Union (EU) has earmarked support of US$ 51 billion to producers. The US has earmarked support of US$ 4.7 billion for cotton only. These kinds of distortions reduce the comparative advantage of natural growers, which are predominantly developing countries. It is estimated that for sugar alone such distortions can cost Brazil US$ 495 million, South Africa US$ 151 million and Thailand US$ 60 million of foreign exchange. It is estimated that if these two distortions, including the export subsidies, are removed, world price can increase by 12 percent.

On the contrary, in food-importing developing and least developed countries (LDCs) reduced subsidy will definitely impact welfare because of increased food prices.

Q 3. Are the subsidies given by developed countries a result of the flawed rules in the AoA or due to gross violation of the rules of the AoA?

Some of the subsidies provided by developed countries like the US and the EU are in contravention of the rules of the AoA. The dispute settlement body of the World Trade Organisation (WTO) has ruled many agricultural subsidies given by developed countries to be illegal. For instance, Brazil had challenged the subsidies provided by the US to its cotton farmers to the tune of US$ 3.2 billion in the dispute settlement body of the WTO, which ruled them to be illegal. Also, export credit subsidies of about US$ 1.6 billion given by the US to its cotton growers were inconsistent with the AoA and hence illegal.

The AoA allows countries to provide non-trade distorting subsidies to their farmers called Green Box subsidies, which include subsidies such as direct payments to the farmers or subsidies for environmental purposes and many

other research and investment subsidies that are exempt from any reduction commitment.

All this needs to be seen in the right perspective. Subsidies, whether they are for environmental or any other purpose, puts the person receiving it in a better position compared to the person not receiving it. Most farmers in developing countries do not get these subsidies because developing countries lack the resources to support their farmers. Hence, the farmer of a developed country having access to any kind of subsidy is certainly better placed in the global trade regime than the farmer of a developing country.

Q 4. What is the classification of domestic support under the AoA?

Domestic support has been classified into three groups depending on their trade-distorting impact and their effect on the amount of production. This helps determine whether they need to be reduced and whether action can be taken against them under the WTO dispute settlement mechanism.

The Amber Box contains subsidies that significantly distort trade and affect the amount of production. They must be reduced, and are open to legal challenge by other WTO members.

The Blue Box (Article 6.5 of the AoA) allows countries unlimited spending for direct payments to farmers if the payments are linked to programmes that limit the amount of production. These are open to challenge by other WTO members, but are exempt from the reduction obligation.

The Green Box contains support that is assumed to have no effect on production. This includes payments linked to environmental programmes, pest and disease control, infrastructure development and domestic food aid. It also includes direct payments to producers if those payments are not linked to current production. Green box subsidies are not subject to the reduction obligation.

The above colour nomenclature is not mentioned in the AoA. However, it is commonly used.

Q 5. Can the low level of average agricultural tariffs of advanced countries help developing countries access markets better?

The average level of tariff is very low in some of the advanced countries but these have not helped the developing countries gain share in these markets for two reasons.

1. Concealed tariffs: Import duties in some advanced countries range from less than 5 percent to zero duty on many product lines that are uncompetitive and maintain high peaks to the level of 250 percent on specific products, making the product price increase more than three times inside the country. There is high prevalence of non-*ad valorem* duties or specific duties in some advanced countries and these are excluded in the calculation of average tariff. These duties are difficult to interpret in *ad valorem* terms. The minimum quota access has two levels of tariff and the dispersion between them is large. On an average, the higher quota tariff is more than three times the lower quota tariff. A similar level of dispersion exists between raw and processed agricultural products and limits the value addition prospects of developing countries.
2. Non-trade measures like Non-Tariff Barriers, sanitary and phytosanitary (SPS) measures and quality standards restrict the entry of agricultural commodities into many developed countries and low tariff levels yield no concessions. Some of these standards have been widely criticised for their variability and for being higher than are internationally acceptable.

With the existing level of transparency on tariff structure it takes more than just low tariffs to gain market access in some developed countries.

Q 6. What is the Doha Development Agenda (DDA) and how can it build on development impacts of agricultural trade?

The negotiation round undertaken at the Ministerial Round at Doha ended by taking effect as the DDA. It was a landmark achievement and built on the long- term objective of the AoA to establish a fair and a market-oriented trading system through a programme of fundamental reforms, keeping in view the provisions for special and differential treatment for developing-country members to pursue agricultural policies that are supportive of development goals, poverty reduction strategies and food security and livelihood concerns.

The DDA came up with clear-cut formulas on reduction of both subsidies and tariffs within a specific time- frame and pledged to give special concessions and differential treatment to cotton-growing LDCs. These initiatives can bring revenue dividends to developing countries with additional time to adjust their economy to compete effectively in the global agricultural trade. But all depends on how these formulas are implemented with most developed countries hesitant to reduce their subsidy levels and developing countries reluctant to reduce their agricultural tariff levels.

Q 7. Is it in the interest of developing countries like India to seek removal of agriculture from the disciplines of the WTO?

The WTO provides the institutional framework for countries to seek elimination of, or imposition of additional disciplines on trade- distorting practices of developed countries in agriculture that are adversely affecting the interests of developing countries like India. Removing agriculture from the WTO would deprive the developing countries of a multilateral framework for seeking reforms in agriculture trade in developed countries. If agriculture is removed from WTO disciplines, developed countries would be free to continue with their existing trade-distorting practices and could introduce further distortions through measures which may otherwise not be permitted. It is, therefore, in the interest of developing countries to continue to seek further disciplines on agricultural practices in developed countries within the framework of the WTO.

Q 8. How does the high level of domestic support provided to agriculture in developed countries adversely affect developing countries like India?

High levels of domestic support to agriculture in developed countries adversely affect the interests of developing countries in many different ways. These may include:

- Severely limiting access of developing country agricultural exports to developed countries, as heavy subsidies lead to depressed prices with which developing countries are not able to compete.
- Forcing farmers from developing countries to match developed-country subsidised prices for the products concerned, thereby reducing unit-value realisation.
- Possibly impeding or displacing developing-country agricultural exports to third-country markets.
- Generating large price volatility in world markets, while farmers in developed countries are sheltered from almost all possible risks because of price support and other subsidies, farmers in developing countries bear the burden of amplified price volatility.
- Depressing domestic prices of agricultural products in developing countries.
- Inducing farmers of developing countries to over-invest in least-subsidised products in developed countries, such as coffee and cocoa, leading to excessive supply and depressed prices for these crops. In the absence of protection in developed countries, such diversification in developing countries would be feasible.

Q 9. In the context of domestic support, what does 'box-shifting' mean?

The AoA has categorised domestic support measures into three: the 'market distorting' measures that have to be disciplined and reduced (Amber Box), and the supposedly less- or non-distorting subsidies that do not have to be disciplined or reduced and in fact can be increased without limit (Blue Box and Green Box). There has been a shift in the developed countries in their domestic agriculture subsidies from the Amber Box, which are subject to reduction commitments, to Green Box and Blue Box subsidies, which are exempted from reduction commitments. This has enabled the developed countries to increase their overall level of domestic support. This practice is commonly referred to as 'box-shifting'.

Q 10. What are the important elements concerning agriculture negotiations mentioned in the Doha Ministerial Declaration?

Under the Doha Ministerial Declaration of 14 November 2001, countries have committed themselves to comprehensive negotiations, *inter alia*, in agriculture aimed at

- substantial improvements in market access, implying reduction of tariffs and liberalisation of tariff rate quotas,
- reduction of and phasing out export subsidies and
- substantial reductions in trade-distorting domestic support.

The Doha Ministerial Declaration specifies that special and differential treatment for developing countries shall be an integral part of all elements of the negotiations. During the negotiations, account would be taken of the development needs of developing countries, including food security and rural development. Further, non-trade concerns would also be taken into account during the negotiations.

Q 11. What is the July 2004 Framework of the WTO?

The July 2004 Framework is commonly used to refer to the decision of the WTO General Council, adopted on 1 August 2004. This decision builds on the Doha Ministerial Declaration and provides the guidelines and principles relating to technical details in respect of various elements for the conduct of further negotiations.

Q 12. Under the July 2004 Framework, what is the nature of disciplines envisaged on export competition?

Under the July Framework, export subsidy and equivalent measures like export credit, export credit guarantees and insurance programmes with a repayment period of beyond 180 days are to be eliminated by a date to be stipulated. Such measures with lesser repayment periods are to be brought under agreed disciplines or are to be eliminated by the stipulated date. Trade distorting practices relating to state trading enterprises (e.g. subsidies given to them or by them, government financing, underwriting of losses etc.) are to be eliminated by the stipulated date. Food aid provisions are to be brought under agreed disciplines or eliminated by the stipulated date.

Q 13. Under the July 2004 Framework of the WTO, what is the nature of disciplines envisaged on trade distorting subsidies?

The July 2004 Framework of the WTO envisages two broad sets of disciplines on trade- distorting support – at the overall level of trade- distorting subsidies and of separate disciplines for each of the three elements comprising trade-distorting support.

At the overall level, the AMS, *de minimis* support and Blue Box subsidy taken together, will be 'substantially' reduced. As the first installment of cut, the total of these three elements will not exceed 80 percent of the base level. (However, countries that allocate almost all *de minimis* support to subsistence and resource-poor farmers are exempt from reducing *de minimis* support).

Separate disciplines for reduction/capping are envisaged for AMS (aggregate measurement of support; Amber Box), *de minimis* and Blue Box. The AMS will be reduced 'substantially' using a tiered approach in which members having a higher total AMS will make greater reduction. *De minimis* support will be reduced as negotiated. Blue Box subsidy will not exceed five percent of agricultural production of a member and members in accordance with the criteria to be negotiated can use it.

Q 14. Under the July 2004 Framework, what is the nature of disciplines envisaged on Green Box subsidies?

The July 2004 Framework of the WTO envisages that the criteria for Green Box subsidies will be reviewed and clarified so as to ensure that these subsidies have no, or at most minimal, trade-distorting effects or effects on production. No reduction commitment is envisaged on Green Box subsidies.

Q 15. What are 'special products' and what flexibility is envisaged in their treatment?

Under the July Framework, developed and developing countries may designate an appropriate number of tariff lines as sensitive. It is likely that sensitive countries may have the flexibility to deviate from the tariff reduction formula. Substantial improvement in market access for sensitive products will be achieved through combinations of tariff reductions and tariff rate quota commitments, while reflecting the sensitivity of the product concerned.

Q 16. How has the demand of certain developing countries on 'special products' (SP) been reflected in the July 2004 Framework?

The July Framework has recognised that developing countries have the flexibility to designate certain products as SPs based on the criteria of food security, livelihood security and rural development needs. Products designated as SPs would be eligible for more flexible treatment, the exact nature of which would be decided during the ongoing negotiations.

Q 17. Can India apply quantitative restrictions on imports of agricultural products for addressing surge in imports or fluctuation in prices of imports?

Under the existing provisions of the AoA any country, developing or developed, to restrict the imports of agricultural products, cannot apply quantitative restrictions. During the ongoing negotiations, some developing countries, including India, have sought a special safeguard mechanism (SSM) to be used by developing countries for addressing situations of import surges or swings in international prices of agricultural products. Apart from additional duties, these countries have sought the flexibility to impose quantitative restrictions under the special safeguard mechanism.

Q 18. As a result of the ongoing agriculture negotiations, will India be required to reduce applied tariffs on all agricultural products?

Under the July 2004 Framework, tariff reductions will be made from bound rates (and not applied rates). In India, there is a considerable gap (also referred to as 'tariff water') between bound tariff and applied tariff in most agriculture tariff lines. Unless the tariff reduction formula results in very sharp reduction in bound rates, India may not have to significantly reduce its applied tariff on most agricultural products.

However, there are a few tariff lines with no tariff water as the applied tariff is at the level of the bound rate. These include edible oils (soyabean, olive and mustard), rice, wheat, maize, garlic, peas, oranges, grapes, grapefruit, apples etc. Unless these tariff lines are subject to flexible treatment as SPs, India would be required to reduce the applied rate of tariff on these tariff lines.

The actual extent by which the applied tariffs would need to be reduced would depend ultimately on the formula adopted and on the flexible treatment to SPs agreed upon during the negotiations.

Section II

Glossary

Agreement on Agriculture (AoA): One of the agreements of the Uruguay Round of negotiations that led to the establishment of the World Trade Organisation (WTO) in 1995. The AoA became operational with the establishment of the WTO from 1 January 1995. It brought agriculture under the purview of substantive multilateral trade rules for the first time. Developed and developing countries got six and nine years respectively for the implementation of commitments under the AoA. The AoA comprises domestic support, market access and export competition.

The AoA also contains provisions for reviewing the agreement. Presently, the AoA is being re-negotiated on the terms agreed by the WTO member countries at the Fourth Ministerial meeting at Doha in 2001 and the July 2004 Framework decision adopted by WTO's General Council on 1 August 2004.

Domestic Support

Subsidy: Financial contributions by the government (e.g. direct transfer of funds, potential direct transfers of funds, revenue foregone) covering some costs of doing business or a particular activity. In the agricultural context, it could mean certain financial benefits to farmers through direct payments, agricultural input subsidies, market price support, decoupled income support, income insurance and income safety nets, payment for relief from natural disasters, structural adjustment assistance etc. among other forms of support.

Aggregate Measurement of Support (AMS): Quantification of aggregate value of domestic support provided by governments to specific products as well as non-specific products. It includes four main elements – (1) market price support which is based on the gap between the fixed external reference price and applied administered price; (2) direct payments dependent on price gap; (3) direct payments not dependent on price gap; and (4) other measures.

Amber Box: Denotes those domestic support subsidies that are considered to distort production and trade and are subject to reduction commitments under

the AoA. These subsidies include market price support, various kinds of payments, input subsidies etc. These subsidies are subject to reduction based on a formula for the 'Aggregate Measurement of Support'.

Blue Box: Denotes those domestic support measures that allow countries to make direct payments to agricultural producers for limiting the production on fulfillment of certain conditions. The level of payment should be based on fixed areas and yields or per head of livestock. This support is unlimited and need not be reduced or eliminated. In the ongoing negotiations, certain developed countries want to retain the Blue Box, whereas many developing countries are calling for complete elimination of the Blue Box subsidies.

***De minimis*:** The maximum ceiling on trade distorting domestic support that is not subject to reduction commitment. In other words, if countries provide trade- distorting domestic support to their farmers below this ceiling it will not be subject to reduction using the AMS reduction formula. This ceiling or threshold is for both general non-product specific support to agricultural programmes and product-specific agricultural programmes. The *de minimis* level for developed countries is five percent of the total value of production for general non-product specific support and five percent of the value of each crop for product specific support. Suppose the total value of production of agriculture in a developed country is 100 units. In such a case, domestic support up to five units is permissible and will not be subjected to reduction. In this case five units is the *de minimis* level of support. The *de minimis* level for developing countries, in this case, would be ten units.

Green Box: Domestic support subsidies covered by Annexure 2 of the AoA that are exempted from reduction commitments. Further, to qualify as a Green Box subsidy it must have no, or at most minimal, trade- distorting effects or effects on production. These subsidies should be government- funded and should not involve price support to producers. In other words, Green Box subsidies are permissible subsidies, as they are considered to have minimal or no trade distorting effects or effects on production. It mainly includes subsidies linked to (1) general services including research, pest and disease control, training services, marketing and promotion services and infrastructural services, (2) environmental programmes, (3) domestic food aid, (4) public stockholding for food security purposes and (5) decoupled income support that is not related to the type or volume of production, prices etc. The US and the EU are the main users of Green Box subsidies. The implementation of the AoA has witnessed many instances where the subsidies presently classified as Green Box are actually found to be distorting trade. The examples of such subsidies are direct payment to producers, decoupled income support and government financial support for income insurance.

Market Access: Permission to a foreign product to enter into a domestic or local market and to compete with the comparable domestic product on a non-discriminatory basis. In other words, it is the willingness of government to allow imported goods and services to compete with similar domestic goods and services.

Special Safeguards (SSG): The flexibility available to certain WTO member countries to impose additional duties on imported agricultural products in case there is (1) an increase in import of these commodities into their territories beyond the prescribed level or (2) a fall in the price of imports below a prescribed level. However, all countries cannot use the special safeguard measure. It can be used only by those countries that 'tariffied' i.e., converted their non-tariff barriers such as variable levies and quantitative restrictions into tariffs. This can be used mainly by developed countries and certain developing countries. Till date, only 21 developing countries have the right to use special safeguards in agriculture. Special safeguard measures are different from safeguard measures under the Agreement on Safeguards, which can be used by all countries.

Special Safeguard Measures (SSM): During the ongoing negotiations, some developing countries, including India, have sought a special safeguard mechanism to be used by developing countries for addressing situations of import surges or swings in international prices of agricultural products. Apart from additional duties, these countries have sought the flexibility to impose quantitative restrictions under the special safeguard mechanism. This proposed SSM is different from the existing provision of SSG in the AoA.

Tariff: A tax or levy imposed at the (national) border on imported products. Tariffs can be imposed in two ways. First is the *ad valorem* tariff, where the tariff rate is based on the value of the import i.e., it is based on the price of the imported product. Second is the specific tariff rate, where tariff rates are imposed on the basis of weight/volume or number of items of the imported product irrespective of the price of the product.

Tariff Rate Quota: A two-level tariff structure, with lower tariff applicable on in-quota imports and higher tariff applied on out-of-quota imports. Simply put, it refers to a trading mechanism that provides for the application of a customs duty at a certain rate to imports of a particular good upto a specified quantity (i.e., in-quota quantity), and at a different rate to imports of that good that exceed the specified quantity. This method of tariffication has been criticised for its poor administration and alleged to be discriminatory and non-transparent.

Bound Tariff: Ceiling tariff or maximum tariff that can be levied on a particular imported product. For instance, if an imported product has a bound tariff rate of 100 percent, the maximum tariff that can be levied on this particular product is 100 percent. Countries can levy tariff rates less than or equal to 100 percent, but not more than 100 percent on this particular product.

Applied Tariff: Tariff that is actually levied on an imported product.

Water in the Tariff: The difference between bound tariff rate and applied tariff rate.

Quota Rents: The difference between the world price and the import price including the out-of-tariff.

Unbound Tariff Line: A tariff line or product for which there is no ceiling or maximum tariff rate that can be levied. In other words, if a tariff line is unbound, the applied tariff rate can go to any level. Under the AoA, WTO members bound tariffs on all agriculture tariff lines.

Tariffication: The process of converting the non-tariff measures that existed during the Uruguay Round of negotiations into tariffs.

Tariff Reduction Formula: This refers to different approaches or methodologies for cutting or reducing tariff rates on different agricultural products or tariff lines.

Uruguay Round Formula: This formula or approach to cut tariff rates was adopted during the Uruguay Round of negotiations. This is a linear reduction formula, requiring an average total of 36 percent (24 percent for developing countries) and a minimum of 15 percent (10 percent for developing countries) in each tariff line. This formula does not lead to steep reduction in the tariff rates.

Swiss Formula: This formula aims at harmonisation of tariffs (bringing all tariffs to the same level) between member countries of the WTO. It cuts higher tariffs more steeply than the lower tariffs. It does not support the cause of developing countries and LDCs as most of these countries have high tariff rates. Adopting the Swiss formula would lead to a steep reduction in their tariff ,exposing them to market volatilities.

Banded Formula: According to this formula, all tariff lines are to be divided into different bands or categories and then each band or category is to be subjected to tariff reduction by applying the Uruguay Round formula.

Blended Formula: This formula mixes the Uruguay Round formula and the Swiss formula. According to this formula, the tariff lines of a particular country are to be divided into three different categories. Of the three, one category or portion would be subject to the Swiss formula, another category or portion of tariff line would be subjected to the Uruguay Round formula and the tariff on the third category of tariff lines would be eliminated.

Tiered Formula: This approach was adopted by the WTO General Council on 1 August 2004 as a part of the framework for establishing modalities for future negotiations. According to this, the tariff lines are to be divided into different bands or categories. Bands or categories comprising of higher tariff rates would be subjected to steeper reductions. However, the number of bands, thresholds for each band and the extent of tariff cut in a particular band are yet to be decided.

Tariff Escalation: Increase in tariffs with the degree of processing of a given commodity. For instance, Canada has a tariff rate of 8.5 percent on raw sugar. However, the tariff rate escalates to 107 percent for refined sugar.

Export Competition

Export Subsidies: These are special monetary incentives, such as cash payments, extended by governments to encourage increased sales abroad, often used when a country's domestic price for a good is higher than the world market price. These are usually payments made by governments that are dependent or contingent on export performance. Export subsidies are particularly trade distorting.

Export Credit: These are payments made by governments to companies to underwrite their cost of doing business on commercial terms. This helps the domestic company to do export more at the cost of the government.

General

Non-Trade Concerns: Those aspects of agriculture that are not related to trade such as food security, rural development, employment protection, environmental protection etc. Agriculture in developing countries and in LDCs is a livelihood issue more than a trade issue.

Peace Clause: Article 13 (Due Restraint) of the AoA protects the country using certain subsidies from being challenged under the WTO agreement and/or imposition of countervailing measures. The Peace Clause expired in the year 2003.

G-20: An alliance of countries in the agriculture negotiations in the WTO, formed in August 2003, that comprises some developing country members of the agricultural exporting countries from the Cairns Group and some other developing countries, including India, which have defensive interests in agriculture.

G-33: An alliance of 42 developing countries, which calls for safeguarding of food and livelihood security and rural development needs through SPs and SSMs.

Non-Agricultural Market Access (NAMA) and Development

Section I

Frequently Asked Questions (FAQs)

1. What is the Non-Agricultural Market Access (NAMA) negotiating process and how is it related to development?

The Non-Agricultural Market Access (NAMA) refers to a process of negotiations mandated by the Doha Ministerial Declaration (2001), aiming to liberalise trade in industrial and consumer products, in particular in products of export interest to developing countries. The negotiations cover all products not covered under the Agreement on Agriculture (AoA). The products covered are essentially industrial goods but also include natural resources like fisheries, gems and minerals. These negotiations aim to reduce border measures to trade, especially tariffs, and other barriers to market access for industrial exports.

NAMA negotiations are closely related to development because it works towards setting standards on the degree to which a country can manoeuvre its tariff policy. Tariff policy in turn is an integral part of the development strategy of any developing country or least developed country (LDC). A strong industrial base is essential to economic development. Tariffs allow countries to control the price, speed and volume at which imports enter their domestic markets to protect local production until the time they are ready to compete. Most present day developed economies make extensive use of tariffs to allow their domestic industries to grow; in fact they continue to rely on tariff peaks and tariff escalation to protect certain sectors. Tariff policy has significant implications for industrialisation, employment and poverty.

Any major reduction in tariff rates can not only impose harsh adjustment costs but also lead to conditions like 'de-industrialisation'. For instance, Senegal experienced large job losses when its average effective rate of protection was reduced drastically from 165 percent in 1985 to 90 percent in 1988. Zambia had a similar experience after it made deep tariff reductions in reforms that it started in 1991.

The implications of the NAMA negotiations on development, however, go

beyond concerns that relate to the preservation of the industrial policy space. NAMA negotiations provide an opportunity for developing countries to have an improved access to developed countries, especially in sectors that are employment-intensive.

It must be noted that imports can play a positive role in industrial development. Open borders allow goods that are not produced locally to enter the local market at a lower cost. Competition from imports can also play an important role by stimulating innovation and more efficient production by local firms.

2. Can better market access in non-agricultural goods in the export market foster development in developing countries and LDCs?

Yes, better market access to non-agricultural goods in the export market can play a major role in fostering development in developing countries and LDCs. Manufacturing contributes to more than 60 percent of the total exports of developing countries. Improved market access in employment intensive sectors can expand employment and/or increase wages.

Some of the most employment intensive manufacturing sectors in developed countries are also the most protected sectors. The existence of disproportionate tariffs in these goods can be cited with an example. In the US, shoes and clothing imports account for almost half the tariff revenue collected, even though they account for just 6.7 percent of the value of total US imports.

Many developing countries and LDCs are involved in the production of labour intensive manufactured goods such as textile and clothing, leather, footwear and marine products.

The high protection in textiles and apparel means that they are second only to agriculture in providing potential gains from liberalisation. These manufacturing and industrial activities provide employment to a large number of people in developing countries. Of all apparel exports, 70 percent comes from developing countries, making it a vital source of employment, income and foreign exchange earnings. The textiles and apparel industry in India provides employment to 38 million people and is the largest employer after agriculture. In Bangladesh, the textiles and clothing sector employs more than one million women workers.

Better market access to non-agricultural goods can also play an important role in fostering development by boosting capital investment in the domestic industry. While domestic demand in developing countries may be inadequate to warrant higher investment in capital upgradation, access to international

markets may play a crucial role in helping developing countries continue with capital investment.

3. Are there any examples where better market access for non-agricultural goods has really led to development in developing countries and in LDCs?

Yes, there are numerous examples to show that better market access to non-agricultural goods has fostered development. Exports of labour intensive manufactured goods such as textiles and clothing, footwear and electronics were one of the most powerful forces that drove poverty reduction in East Asia. Exports created demand for goods produced in labour intensive manufacturing industries, which in turn created demand for labour and increased real wages. In the mid-1970s, six out of ten people in East Asia lived in extreme poverty. This ratio reduced to less than two by the end of 1990s. Production for export markets in these countries also generated resources to import inputs and technologies required for sustained growth.

India has gained significantly in the textiles and clothing sector. Exports constitute roughly 50 percent of the total production of textiles and garments. The benefits of multilateral liberalisation to the Indian textiles and clothing industry under the Uruguay Round have been palpable. Exports of textiles have increased 143 percent in the period 1995-96 to 1999-2000. Correspondingly, the employment has increased by about 113 percent.

4. Is reducing tariff rates in developed countries a feasible way to increase market access for developing countries?

Yes, reducing tariff rates in developed countries is a feasible way to increase market access for developing countries. High tariffs in developed countries, especially on products of export interest to developing countries, are major barriers to exports from developing countries. The average tax imposed by developed countries on textiles and clothing imports is about 12 percent compared to 3.8 percent for all industrial products.

For instance, the US imposes an average tariff rate of 3.2 percent on all non-agricultural goods. However, the bound tariff rate on textiles and clothing is 8.6 percent. This is more than two times the average tariff rate for other products. Similarly, the EU has an average tariff rate of four percent on all non-agricultural goods. However, the tariff rate on textile and clothing is 7.9 percent, almost double the average tariff rate for other products.

These high tariff rates restrict the market access of developing-country exports and deny the developmental impact that market access could have provided.

Tariff escalation is also an issue in developed countries: a situation where import duties are structured to gradually rise as the imported products go from their raw state to a more processed form. The EU imposes a tariff of less than four percent on Indian yarn, but the tariff escalates to 12 percent for garments. Tariff escalation as a tariff measure in developed countries discourages the growth of the processing industry in developing countries. This restricts developing countries and LDCs to graduate from merely exporting raw materials to exporting processed and finished goods.

5. Will reduction in tariff rates be advantageous to LDCs?

Yes, tariff reduction on some products, especially on those that attract a very high tariff rate in developed country markets, will benefit LDCs. On the other hand, tariff reduction may also hurt the interests of LDCs. This could happen because tariff reduction may erode preferences that LDCs enjoy in the markets of developed countries. Most of the LDCs get access to the markets of developed countries on preferential tariff rates as compared to developing countries. However, if the tariff rates that are applied to all the countries (mos favoured nation tariff rate) come down, then the preferential rate at which the products of LDCs get access will get affected. This may adversely affect the interest of LDCs. However, this may not be an appropriate reason to ask for the retention of tariff rates in developed country markets. On the contrary, there is a need to develop compensatory mechanisms for those LDCs whose prefer ence margins will get affected.

6. Apart from tariffs, are there other barriers that restrict export from developing countries and LDCs to developed countries?

Yes, there are other barriers that restrict exports from developing countrie and LDCs to developed countries. These barriers are called Non-Tariff Barrie (NTBs). With the process of conversion of quotas and other barriers into ta iffs (tariffication), and further reduction of tariffs, NTBs are emerging as ne tools for trade protection. The United Nations Centre for Trade and Develo ment UNCTAD-Ministry of Commerce, Government of India - DFID Project ‘Strategies and Preparedness for Trade and Globalisation in India’, has clas fied over 100 such trade measures including measures that control volume exports, measures that control price, monitoring measures, technical barrie standards as well as custom and administrative formalities.

The imposition of NTBs or the requirement to fulfill the import standards i

poses huge financial burden on developing countries. According to a study by the World Bank, 'Certification costs can be particularly significant for small firms. ISO 9000 certification for a single plant can cost upto US$ 2,50,000 with additional auditing costs after initial approval'. Similarly, tyre certification for exports is an expensive proposition; in some countries it costs a company around US$ 20,000 for the first application and approval. The certificate is valid for a year and US$ 1100 has to be paid for every year for getting the certificate revalidated; in addition, an amount of US$ 600 per day has to be paid for the factory visit of inspectors.

WTO members are engaged in the task of separating valid NTBs from those measures whose primary purpose is to shield domestic producers from foreign competition. The July Framework agreed at the WTO last year recognises that NTBs are an 'integral' part of the NAMA talks. Progress on the reduction of inappropriate NTBs, however, has been very slow.

7. Apart from market access, are there other development-related linkages of negotiations on non-agricultural market access?

Yes, there are other development-related linkages of industrial tariffs and negotiations on non-agricultural market access.

Many developing countries and LDCs use tariffs as a major source of revenue. In the Organisation for Economic Cooperation and Development (OECD) countries, tariffs account for a mere one percent of government revenues. However, tariff revenue on average contributes to more than 30 percent of tax earnings in LDCs. In LDCs like Swaziland and Uganda tariff revenue constitutes more than 50 percent of government revenue. For an LDC or low-income developing country, loss of revenue from tariffs can have a significant effect on the ability of the government to provide for essential services and goods for its people.

Hence, it is important to ensure that the tariff reduction process for developing countries is not steep and cushions are built in to compensate for adjustment costs.

8. What should be done to increase the market access of non-agricultural goods of developing countries and LDCs to allow them to foster development?

The following measures could increase the market access of non-agricultural goods of developing countries and LDCs:

- Developed countries should undertake deep reduction in their tariff rates, especially on products of export interest to developing countries and LDCs, such as textiles, clothing, leather, footwear and marine products.
- A compensatory mechanism should be developed to protect the interests of LDCs, whose preferences in developed country markets will suffer because of reduction in the tariff rates applied on a Most Favoured Nation (MFN) basis.
- Developed countries should substantially reduce the use of NTBs against the exports of developing countries and LDCs. Developed countries should not use NTBs for protectionist purposes. Also, developed countries should not, without adequate justification, impose import standards that are more stringent and stricter than what the international standard-setting organisations have established.
- Developing countries should not be asked to undertake steep and harsh tariff reductions, as this will impose harsh adjustment costs on these counties. Any process of tariff reduction should be gradual and should take into account the developmental concerns of these countries.

9. What happened in industrial tariff liberalisation in the Uruguay Round and what was the mandate for the Doha Development Round?

Under the General Agreement on Tariffs and Trade (GATT), countries engaged in a series of tariff negotiation rounds to liberalise trade in goods. By the time the WTO (World Trade Organisation) was established in 1995, successive rounds of liberalisation had achieved considerable tariff reduction, particularly among developed countries. In the negotiations, countries made requests and offers to reduce tariffs in particular sectors. GATT members were allowed flexibility to choose which sectors to liberalise and by how much; developing countries were allowed greater flexibility. As a result of the Uruguay Round commitments, India has bound 69.8 per cent of its tariff lines on industrial products.

At the 2001 Doha Ministerial Conference, members agreed to negotiations on NAMA. Since Doha was intended to be a development round, the focus of the NAMA negotiations was on the elimination of tariff peaks and of tariff escalation on products of export interest to developing countries. Governments also agreed that they would take into account the special needs and interests of developing countries. Paragraph 16 of the Doha Ministerial Declaration states:

'We agree to negotiations which shall aim, by modalities to be agreed, to reduce or as appropriate eliminate tariffs, including the reduction or eliminatio

of tariff peaks, high tariffs, and tariff escalation, as well as Non-Tariff Barriers, in particular on products of export interest to developing countries [...] The negotiations shall take fully into account the special needs and interests of developing and least developed countries, including through less than full reciprocity in reduction commitments [...] To this end, the modalities to be agreed will include appropriate studies and capacity-building measures to assist LDCs to participate effectively in the negotiations.'

10. What implications does the Framework Agreement of July 2005 have on NAMA negotiations?

On 31 July 2005, the WTO General Council adopted a Framework Agreement that sought to determine the contours of the negotiations till the Hong Kong Ministerial.

The Framework on NAMA is mainly the Cancun Derbez Text, with an additional paragraph in Annex B. Developing countries insisted on this paragraph as an avenue for further negotiations on key issues of concern to them. This new paragraph is supposed to provide for further negotiations on these issues. The additional paragraph most importantly states that Annex B contains the initial elements for future work and adds that additional negotiations are required to reach agreement on the specifics of some of these elements. These elements are:

1. Determination of an appropriate formula to be applied;
2. Special and differential treatment for developing countries;
3. Issues of binding coverage for developing countries;
4. Aspects relating to sectoral issues not only in terms of voluntary or mandatory participation but also in terms of sectoral selection; and
5. Issues relating to adjustment costs, tariff revenue losses and preference erosion.

The three most important features of Annex B pertain to:

1) A formula for reducing tariffs: In contrast to previous industrial tariff liberalisation negotiations under the GATT, this Annex calls for a formula approach to reduce tariffs and states that the negotiating group should continue its work on the non-linear formula to be applied on a line- by-line basis. The Swiss Formula is commonly referred to as a 'non-linear formula'. It is also called 'harmonising formula'. Another formula, the Girard formula, favoured by some larger developing countries including India and Brazil, is also non-linear but uses different variables, or coefficients, for developing and developed countries. Using a non-linear

formula to reduce tariffs in all NAMA sectors implies steep tariff cuts for products with high tariff levels and leveling of tariff structures that have tariff peaks and tariff escalation. Some developing countries have, however, argued that negotiations need not be based on the Swiss Formula. These countries assert that reference to a non-linear formula" falls within the 'initial elements', and that they have not been previously accepted or agreed upon.

2) Negotiations to be on bound rates: An important demand of developing countries was conceded when the Framework agreed that reductions will be based on bound rates, and not on applied rates.

3) Increased tariff binding: A key commitment that countries made in tariff negotiations is to set a ceiling on the level of a tariff, known as `tariff binding'. This is because, under WTO rules, tariff reductions can be made only on tariffs that are bound. Many developing countries have only a small number of bound tariffs. A country can choose to apply tariffs at lower levels but, once a tariff is bound under the WTO, it cannot exceed that level. Many countries use lower applied tariffs than their bound levels. Annex B proposes that members who have less than 35 percent of their tariff lines bound are expected to bind all their tariffs at a specified level. LDCs are asked to increase their tariff bindings. In exchange for this, both groups will be exempt from applying the formula to reduce tariffs, whatever that turns out to be, during the Doha Round of negotiations.

Section II

Glossary

Ad Valorem Tariff: A tariff that has been calculated as a percentage of the value of an imported good.

Agreement on Subsidies and Countervailing Measures (ASCM Agreement): This is the Uruguay Round agreement that sets out the rules under which WTO members may provide and apply subsidies for domestic products or impose countervailing measures on subsidised imported products.

Agreement on Technical Barriers to Trade (TBT Agreement): This is the Uruguay Round agreement that sets the rules under which WTO members may establish and apply technical regulations and standards, including packaging, marking and labeling requirements. It also sets the procedures for assessment of whether domestic and imported goods comply with such technical regulations and standards

Anti-Dumping (AD) Measure: This is a governmental action that seeks to stop and remedy the dumping of imported goods into the territory of a WTO member by imposition of an anti-dumping duty.

Applied Tariffs: The current or the actual tariff rates levied on imported products. Applied tariffs may be below or equal to bound tariffs, but may not exceed them. For instance, the applied tariff in India for hydraulic brake fluids is 20 percent, while the bound tariff rate is 40 percent. This implies that India has the flexibility to increase this applied tariff rate to 40 percent.

Average Tariff: The simple average of all applied ad valorem tariffs (tariffs based on the value of the import) applicable to the bilateral imports of countries. This rate is calculated by adding up all the tariff rates and dividing them by the number of import categories.

Bindings: (see also bound rate) When a country commits not to raise the tariff on an item above a specified level, the level is called a 'binding'. The levels at which members bind their tariffs is agreed to through negotiations

in the WTO. Thus a binding (also called a concession) is a legal obligation not to raise tariffs on particular products above the specified rate agreed to in negotiations. This rate is incorporated into a country's schedule of concessions. WTO members can break a commitment (i.e. raise a tariff above the bound tariff), but only through negotiations with the countries affected by this measure, which may require payment of compensation for loss in trade by trading partners.

Bound Tariff: Refers to the specific level at which a tariff has been bound. By binding a tariff at a particular level, a country agrees not to raise the tariff above that level. In practice, the applied rates of countries (particularly developing countries) are usually lower than the bound rate. (See also binding.)

Compound Tariff: A combination of ad valorem and specific tariffs (such as 10 percent plus US$ 5 per kilogram).

Countervailing Measure (CVM): Also known as 'countervailing duty', this refers to a special duty or tax imposed by an importing country on an imported product for the purpose of offsetting any subsidies provided in the exporting country, directly or indirectly, for the making, production, or export of the product.

Doha Development Agenda: This is the name given by the WTO Secretariat to the trade negotiations that WTO members agreed to embark on when they met in Doha for the Fourth Ministerial Conference of the WTO in November 2001. It used the term 'development agenda' as opposed to 'round'. However the term 'Doha Development Agenda' is not defined or even mentioned in the text of the Doha Declaration, so many members prefer the use of the term 'Doha work programme', which is technically correct.

Dumping: Dumping, as is generally understood in the WTO, occurs whe a product is exported to other countries at a price that is lower than the do mestic sale price (of a comparable or similar product), export price in a thir country or lower than the cost of production.

Enabling Clause: The expression 'enabling clause' is used to describe th 'Decision on Differential and More Favourable Treatment, Reciprocity and Full Participation of Developing Countries' adopted in 1979 in the GATT. The aim this clause was to allow developed countries to derogate (or deviate) from th requirements of MFN in order to stimulate trade with developing countries. is the legal basis for the General System of Preferences (GSP) and special a differential treatment (S&DT or S&D).

G20: A group of countries that export agricultural products who came together as one of the strongest negotiating forces during the Fifth Ministerial Meeting of the WTO in Cancún. The G20, which is 'united around agricultural reform', is led by Brazil, China, India and South Africa. Other members include Argentina, Bolivia, Chile, Costa Rica, Cuba, Ecuador, Egypt, Guatemala, Indonesia, Mexico, Pakistan, the Philippines and Thailand. Together, these countries make up over half the world's population and two-thirds of its farmers.

Harmonised Commodity Description and Coding System (HS): The Harmonised Commodity Description and Coding System (HS) is a commodity classification system in which articles are grouped largely according to the nature of the materials of which they are made, as has been traditional in customs nomenclatures. The HS contains approximately 5000 headings and subheadings covering all articles in trade. These provisions are organised in 96 chapters arranged in 21 sections which, along with the interpretive rules and legal notes to the chapters and sections, form the legal text of the HS. The HS was developed and is maintained by the World Customs Organisation (WCO), an independent intergovernmental organisation with over 160 member countries based in Brussels, Belgium.

Generalised System of Preferences (GSP): A trading system allowed under the enabling clause, whereby developed countries offer preferential treatment, such as zero tariffs, to products originating in developing countries, without the requirement that the developing country reciprocate these measures. The countries granting this preferential treatment unilaterally choose what product ranges and which countries can benefit. However, they have also been criticised lately of using the GSP scheme to impose conditionality on developing countries.

Most Favoured Nation (MFN) Treatment: A commitment by a country to extend the same treatment it accords to its most-favoured trading partner to all its trading partners. For instance, if Canada imposes a one percent tariff on imports of kiwi fruit from New Zealand, MFN treatment would demand that Canada extend the same treatment to the import of kiwi fruit from all other WTO members. Together with national treatment (see below), MFN is at the core of the non-discrimination principle that lies at the heart of trade law.

Mixed Tariff: A choice between ad valorem and/or specific tariffs depending on the condition attached (for example, 10 percent or US$ 5 per kilogram, whichever is greater).

Rules of Origin: Laws, regulations and administrative procedures that determine a product's country of origin. A decision on origin by a customs authority

can determine whether a shipment falls within a quota limitation, qualifies for a tariff preference or is affected by an anti-dumping duty. These rules can vary from country to country.

National Treatment (NT): A commitment by a country to treat foreign products in the same manner as they would treat domestic products (provided that the foreign products are 'like' their domestic counterparts).

Non-Tariff Barriers (NTBs): These are measures that have trade-restrictive effects on trade in goods or services, but do not involve tariffs. These include technical barriers to trade and quantitative restrictions. They can include standards intended to promote health and protect the environment.

Safeguard Action: Emergency protection to safeguard domestic producers of a specific good from an unforeseen surge in imports (GATT Article XIX).

Schedule: A country's schedule is the document that sets out the terms, conditions and qualifications under which it will import foreign goods or open service sectors to foreign competition. Each WTO member has its schedule that sets out the areas in which it has made WTO commitments, for instance the maximum tariff level (see binding or bound rate) for a particular product

Simple Average Applied Tariff Rate: The average of a country's applie tariff rates. The simple average applied tariff is calculated by dividing the tota of applied tariffs by the number of tariff lines. For instance, if there are thre tariff lines with an applied tariff rate of 10 percent, 25 percent and 33 percen respectively, then the simple average applied tariff rate will be {(10+25+33)/3 22.67 percent.

Simple Average Bound Tariff rate: The average of a country's bound tari rates on different tariff lines. The simple average bound tariff rate is calculate by dividing the total of bound tariff rates by the number of tariff lines. Fo instance, if there are three tariff lines with a bound tariff rate of 100.7 percen 63.8 percent and 90 percent respectively, the simple average bound tariff ra will be {(100.7+63.8+90)/3} 84.33 percent.

Special and Differential Treatment (S&DT or S&D): Preferential trea ment that WTO rules accord to developing countries, and which can be mar fested in different ways: developing country exports may enjoy preferent access to developed country markets, may not be expected to offer full re procity in trade negotiations (i.e. they may gain more than they concede) a may enjoy greater flexibility and longer periods of time to phase in new co mitments.

Subsidies: This refers to any direct or indirect payments made, or revenues foregone (e.g. tax exemptions or write-offs), by governments as a result of laws or measures requiring such actions in order to support the production, manufacture or trade of goods or services.

Specific Tariff: Tariff levied at a specific rate per physical unit of a particular item. For instance, a tariff of US$ 10 on every kilogram of butter imported.

Tariff: A duty or tax on goods imposed at the border or the tax imposed on the import or export of goods. In general parlance, however, it refers to 'import duties' charged at the time goods are imported. Tariffs have three primary functions: to serve as a source of revenue, to protect domestic industry and to remedy trade distortions. Tariffs can be ad valorem, specific or mixed.

Tariff Binding: This requires the setting of a maximum tariff rate on an imported product. While the applied tariff rate charged by an importing country can vary, an importing country cannot exceed the bound rate without renegotiating its WTO commitments. Tariff binding comprises two issues: tariff binding coverage, implying the number of tariff lines to be bound and the rate at which unbound tariff lines should be bound.

Tariff Classifications: National tariffs are organised in the form of tables that consist of tariff classification numbers' assigned to goods and a corresponding tariff rate. The way in which an item is classified for tariff purposes will have an important and palpable effect on the duties charged. When classifications are applied in an arbitrary fashion, they can in effect nullify rate reductions. The GATT does not have any rules regarding tariff classifications. In the past, countries had their own individual systems. However, as trade expanded, countries began to recognise the need for more uniform classifications, which resulted in the drafting of the HS in 1988. Today, most countries use a harmonised system of six-digit tariff numbers. The latest revision of the HS that is in force is the HS Revision of 2002 (HS 2002). The results of the NAMA negotiations will be finalised in HS 2002.

Tariff Escalation: Higher import duties on semi-processed products than on raw materials, and higher still on finished products. This practice protects domestic processing industries and discourages the development of processing activity in countries where raw materials originate.

Tariff Line: A single item in a country's tariff schedule.

Tariff Peaks: There is no universally accepted definition of tariff peaks. For developed countries, a tariff peak commonly refers to a tariff of more than 15

percent. Across all countries, a tariff peak is commonly understood as a tariff that is more than three times the country's average tariff. In other words, it refers to high tariffs, usually on 'sensitive' products, amidst generally low tariff levels.

Tariff Revenue: The revenue generated for the government from tariffs.

Tariff Schedule: It refers to, among other things, members' commitments to reducing bound rates. Also see schedule.

Tariff War: When one nation increases tariffs on goods imported from or exported to another country, and that country then retaliates by also raising tariffs.

Tariffication: Conversion of NTBs to tariffs at the level of their tariff equivalent. In the Uruguay Round, agricultural NTBs were tariffied and bound to replace unwieldy NTBs with tariffs that could then become the subject of negotiation.

Trade Creation: Occurs when liberalisation results in imports that displace less efficient local production and/or in expanding consumption that was previously depressed by artificially high prices due to protection.

Trade Diversion: Occurs when a trade reform measure discriminates between different trading partners and a less efficient (higher cost) source displaces a more efficient (lower cost) one. Can arise whenever some preferred suppliers are freed from barriers but others are not.

Uruguay Round: The multilateral round of trade negotiations that began in 1986 and concluded at the Marrakesh Ministerial meeting in April 1994. The Uruguay Round had many significant outcomes including the creation of the WTO.

Weighted Average Tariffs: A measure that weighs each tariff by the share of total imports in that import category. Thus, if a country has most of its imports in a category with very low tariffs, but has many import categories with high tariffs but virtually no imports, then the trade-weighted average tariff would indicate a low level of protection. The standard way of calculating this tariff rate is to divide total tariff revenue by the total value of imports. Since many countries regularly report this data, this is a common way to report average tariffs. To illustrate the difference between simple average tariff and weighted average tariff, Canada has a simple average tariff of 7.1 percent but its trade-weighted average, in contrast, is a mere 0.9 percent.

Tariff Reduction Formulae and Approaches

Swiss Formula: A tariff reduction formula that requires WTO members to narrow the gap between high and low tariffs ('harmonising tariffs'.) The Swiss Formula is a special harmonising method. Tariffs are reduced by using a harmonising coefficient that cuts higher tariffs more steeply in comparison to lower tariffs and establishes a maximum final rate no matter how high the original tariff was. Under the simple Swiss formula, the higher the tariff, the greater the cut. Developing countries are generally opposed to the simple Swiss formula, as they tend to have higher tariffs on industrial goods than developed countries. The Swiss formula is T1 = (B*T0)/(B+T0) where T1 is the new tariff rate, T0 is the initial tariff rate and B is the reduction coefficient.

Simple Swiss Formula: The proposals for the Simple Swiss formula include (1) the EC proposal of a single-coefficient Swiss formula with credits, (2) the Norway e proposal of a dual-coefficient Swiss formula with credits and (3) the US proposal for a dual-coefficient Swiss formula – one coefficient for developed countries and a higher coefficient for developing countries.

Girard Formula: Tariff reduction formula that takes into account the interests of developing countries by incorporating each country's average tariff. The equation for the formula is T1 = B*T2*T0/B*T2+T0, where T1 is the final bound rate, T2 is the average of the base rates, T0 is the base rate and B is the coefficient. Higher the value of B, lesser will be the rate of tariff reduction. For example, in the case of India, the bound tariff rate for fish and fish products is 100.7 percent. If the tariff reduction for this category takes place with a lower value of B, say 0.5, then the tariff rate after reduction will be 14.6 percent. If the value of B is changed to 1, the tariff rate after reduction will be 25.5 percent.

Sectoral Approach: Cutting or eliminating tariffs on certain sectors independent of the tariff-cutting formula that is followed for other sectors.

Zero-For-Zero Approach: Tariff reduction approach, which implies that in certain identified sectors all countries should bring down their tariff rates to zero. For instance, in the fish and fish products category, India and Pakistan have 87 percent and 90 percent of tariff lines unbound respectively. When such a high proportion of tariff lines is unbound in a sensitive sector, it would not be prudent for these countries to support the zero-for-zero approach.

EC Tariff Reduction Approach: The EC has proposed a Swiss formula at the NAMA negotiations in March 2005. The formula is T1 = (X*T0)/(T0+X), where T1 is the final tariff, X is the given coefficient and T0 is the initial tariff. Accord-

ing to this ambitious proposal unveiled by the EC, developing countries that accept this Swiss formula could use flexibilities such as exempting some tariff lines from tariff reduction. Further, if developing countries do not use the flexibilities they earn 'credits', which are used to increase the coefficient (X).

US Tariff Reduction Approach: The US has proposed a Swiss formula with two coefficients: one for developed countries and another for developing countries. The US proposal also states that the two coefficients must be 'within sight of each other', which means that the coefficient for developed countries should not be significantly greater than that for developing countries. In other words, this formula talks of harmonising the tariff rates of developed and developing countries. This approach will be detrimental to developing countries.

Norway Tariff Reduction Approach: Proposed by Norway, this is a non-linear tariff-cutting formula with two coefficients that includes a simple and transparent system of credits. The formula is T1 = (A*T0)/A+C), where T1 is the new bound tariff after the formula cut, T0 is the old bound tariff and A is the coefficient indicating the level of ambition. 'A' will have different values for developed and developing countries. 'C' is the credit that the country gets for binding 100 percent of its tariff lines and participating in the sectoral approach to tariff reduction.

Argentina, Brazil and India (ABI) Approach: ABI have proposed a modified Swiss formula for tariff reduction that takes into account the average tariff rate of every country. This formula is T1 = B*T2*T0/B*T2+T0, where T1 is the final bound rate, T2 is the average of the base rates, T0 is the base rate and B is the coefficient. The ABI approach is primarily based on the Girard formula. The main difference between the simple Swiss formula and the ABI formula is that while under the ABI proposal it is possible for developing countries to make lower percentage reduction than developed countries, with a scenario of all countries offering 50 percent reduction on an average with a coefficient of one, under the simple Swiss formula all countries will have to reduce their maximum tariff to a rate below the coefficient agreed to. Thus in the Swiss formula the developing countries with high tariff averages will be making much greater percentage reduction in their tariffs than the developed countries, as they have very low tariffs on NAMA products. Additionally, the ABI proposal takes flexibilities for developing countries of not applying formula cuts or keeping a certain number of tariff lines unbound, contained in the July Framework Agreement (paragraph 8 of Annex B), as a non-negotiable given whereas the other proposals view them as trade-offs for higher reduction coefficients. India has clearly stated that the Swiss formula is not acceptable, as it does not meet the mandate.

Pakistani Tariff Reduction Proposal: Simple Swiss formula for tariff reduction proposed by Pakistan, with two coefficients. Based on existing bound average tariff rates, the coefficient for developed countries would be six and that for developing countries 30. This would have the effect of harmonising tariffs in both bands while retaining the difference in average tariff levels between the groups. According to Pakistan, its proposal would reduce the average bound rate of 35 percent and the applied rate of 25 percent of developing countries to around 15 percent, while the average bound and applied rates of developed countries would be cut roughly by four percent.

Non-Tariff Barriers: Government and non-government measures other than tariffs that restrict or distort international trade. Examples include import quotas and discriminatory government procurement practices. Baldwin (1970) defines 'non-tariff distortion' as 'any measure (public or private) that causes internationally-traded goods, services or resources devoted to the production of these goods and services to be allocated in such as way as to distort potential real world income'.

Non-Tariff Measures: Measures other than tariff measures that are used to regulate international trade are called non-tariff measures. These could be in the form of standards, certifications or custom formalities. When non-tariff measures discriminate between domestic sellers and non-domestic sellers, they are called non-tariff barriers.

Technical Barriers: These are various standards applied to imported products for health and safety reasons to ensure that imported products conform to the same standards as those required by law for domestically-produced products. Technical barriers may lead to prohibition of non-complying imports or necessitate cost-increasing production improvements.

Parallelism: A commonly used term in NTB negotiations under NAMA. It means that NTBs should be addressed in parallel to reduction in tariffs, as NTBs in many occasions have nullified existing market opportunities.

Section I

Frequently Asked Questions (FAQs)

1. How are services defined in the WTO?

The term 'services' covers a wide range of activities. The WTO secretariat has divided these divergent activities into 12 sectors — business (including professional and computer); communication; construction and engineering; distribution; educational; environmental; financial; health; tourism and travel; recreational, cultural and sporting; transport and other services not included elsewhere. These 12 sectors have been further divided into 155 sub-sectors.

2. How are services traded?

Services differ from goods in a number of ways, most commonly in the immediacy of the relationship between supplier and consumer. Many services are non-transportable, i.e. they require the physical proximity of supplier and customer. For international trade to take place in such non-transportable services, either the consumer must go to the supplier or the supplier must go to the consumer.

To simplify understanding of services, the WTO classifies trade in services or modes of delivery of services as follows:

- services supplied from one country to another (e.g. international telephone calls), officially known as 'cross-border supply' (in WTO jargon, 'Mode 1')
- consumers or firms making use of a service in another country (e.g. tourism), officially 'consumption abroad' ('Mode 2')
- a foreign company setting up subsidiaries or branches to provide services in another country (e.g. foreign banks setting up operations in a country), officially 'commercial presence' ('Mode 3')
- individuals travelling from their own country to supply services in another (e.g. fashion models or consultants), officially 'presence of natural persons' ('Mode 4')

3. Are services important for developing countries and India?

Services currently represent two-thirds of world gross domestic product (GDP). The share of value-added services in GDP tends to rise significantly with the level of income of countries standing at 69 percent on average in high-income countries (73 percent in the US), against 55 percent and 44 percent respectively in middle- and low- income countries. Services are a high employment-generating sector and employ as much as 40 percent and 70 percent of the workforce in developing and developed countries respectively.

Although large Organisation for Economic Cooperation and Development (OECD) countries dominate global trade in services, developing countries top the list of countries that are most specialised in exports of services as a source of foreign exchange. Exports of services from developing countries doubled during 1990-1999. During the last decade, exports of services were among the top five sources of foreign currency income i.e. foreign exchange inflows for 90 developing countries and were among the top export revenue earners in 38 countries (including 19 LDCs). It is estimated that services are the largest recipients of international investment flows, accounting for just over half of global outflows in 1999.

In India, too, services accounted for 51 percent of GDP in 2000-2001 while agriculture accounted for 23 percent and manufacturing 26 percent. More significantly, the services sector accounted for around a quarter of India's trade flows in the same period. The high growth of services exports explains the higher share of India in global service trade than in global merchandise trade: 1.4 percent compared to 0.9 percent. India exhibits a strong revealed comparative advantage in services vis-a-vis goods. Between 1996 and 2000, while the revealed comparative advantage (RCA) index for services increased by 74 percent, that of goods increased by only 15 percent.

4. Are there any development benefits of liberalising services?

The services sector is the largest and fastest-growing sector of the world economy. According to the World Bank, services generally account for over 50 percent of GDP in developing countries, and is the fastest growing sector in many LDCs. Indeed, developing countries generally stand to make gains from services liberalisation, despite a perception in much of the developing world that they will lose out because their domestic service industries are inefficient and non-competitive. For all economies, the gains from more open trade in services are substantially greater than those from liberalising trade in goods. There are several reasons for this. Levels of protection in services trade are higher than for other areas, and services is occupying an ever-larger

share of the economy. Liberalisation of services has strategic importance for other sectors such as agriculture and manufacturing, for which services are inputs. Competitive services industries such as telecommunications, banking and transportation are critical if other sectors of national economies are to be competitive. Efficient and competitive services not only provide a direct benefit to consumers but provide vital support for overall economic development. Lower transaction costs, more transparent regulations and more reliable access to services also benefit consumers and attract longer-term investment. The poverty-reducing impact of services liberalisation is also of importance and works through the following channels — direct impact on growth that in turn reduces poverty, employment creation and direct poverty alleviation effects. Increased access to services like education, health and telecommunications as a result of the liberalisation of the services sector would in itself be meeting a United Nations millennium development goal (MDG).

5. Are there concerns regarding liberalisation of services?

Although there has been significant unilateral trade liberalisation, most countries have so far been wary of engaging in multilateral talks in services. One reason is that it is difficult to make deep legislative and regulatory changes needed to open services markets in the context of international trade negotiations.

More importantly, scope for reciprocity within service sectors has been drastically curtailed by the unwillingness of industrialised countries to conside greater openness where developing countries have comparative advantage notably, in the supply of services through the movement of persons (Mode 4) The WTO July 31st Framework Agreement on Services incorporates the specif ic recommendations of the Special Session of the Council for Trade in Services Member states were urged to 'ensure a high quality' of trade-liberalising offers 'particularly in sectors and Modes of export interest to developing countries with special attention given to least-developed countries'.

Supply-side constraints and inadequate infrastructure also pose a severe con straint to developing countries like India from realising the welfare gains fro trade in services. First, there is lack of data on services trade, which make it difficult or impossible for developing countries to assess the effects of pa or future liberalisation. Lack of data also made it impossible to fulfil a Ge eral Agreement on Trade in Services (GATS) condition that there be a prope evaluation of effects of services liberalisation before embarking on new neg tiations. It also hinders efforts to develop safeguard mechanisms against th negative effects of liberalisation on developing countries.

6. What is the GATS and why is it needed?

The WTO rules on trade in services, embodied in the General Agreement on Trade in Services (GATS), aim at creating a basic framework for disciplining the use of trade measures in services by WTO member countries. Such measures consist of laws, regulations, administrative actions and decisions affecting the purchase, payment or use of a service or the presence of foreign service suppliers. The GATS also seeks to commit member countries to provide improved market access and national treatment obligations in different modes of supply. The aim of the GATS is to apply common rules to the delivery of services in national economies by foreign service providers and to reduce barriers to trade in services over time. The assumption is that opening up trade in services makes the sector more competitive, boosts overall economic efficiency and improves the quality of services provided.

Under the GATS, member governments list the sectors they want to liberalise or guarantee foreign suppliers the right to provide the service domestically. Governments can choose to liberalise only parts of a sector and can specify the level of market access and the degree of national treatment they are willing to allow. They are also able to limit commitments to one or more of four modes of supply through which services are traded. This is the positive list approach of the GATS.

7. What is the status of commitments so far on GATS?

The commitments undertaken by the WTO member countries at the Uruguay Round vary significantly. One-third of the members have committed on less than 20 sectors, another one-third have committed between on 20 and 80 and the rest have committed on between 80 and 145 sectors (out of around 160). In the Uruguay Round, service sectors such as basic telecommunications, financial services, movement of natural persons and maritime transport services required extended negotiations. Negotiations on the first two sectors were concluded in 1997, while the negotiations on movement of natural persons were concluded in 1995. The negotiations on maritime transport services were suspended in 1996. However, the GATS Council required the resumption of the negotiations in these services in the next round.

The GATS mandated negotiations under Article XIX in order to develop additional disciplines, which were launched in early 2001. Immediately after the launch of the fresh round of GATS negotiations, the members adopted 'negotiated guidelines and procedures' (S/L/93) for these negotiations. The mandated negotiations were given further impetus in the Doha Ministerial Conference where ministers agreed (para. 15 of the Doha Declaration) that participants

would submit initial requests for specific commitments by 30 June 2002 and initial offers by 31 March 2003 within the overall time-frame for negotiation, the deadline for which is 1 January 2005. Although the deadlines have been missed, the WTO July package of 2004 provided extended time for members to submit initial/revised offers by May 2005.

8. What are the exceptions under the GATS? Does the GATS go against domestic services regulations?

The GATS applies in principle to all service sectors, with two notable exceptions. Article 1(3) of the GATS excludes 'services supplied in the exercise of governmental authority'. Examples include social security schemes and other public services such as health or education that are provided at non-market conditions. Further, the Annex on Air Transport Services excludes from coverage measures affecting air traffic rights and services directly related to exercise of such rights.

The GATS recognises the right of members to regulate the supply of services in pursuit of their own national policy objectives. However, the GATS establishes a framework of rules to ensure that members administer their services regulations in a manner which is reasonable, objective and impartial and does not constitute unnecessary barriers to trade. One of the tests that can be used to find out whether a particular domestic regulatory measure is genuine or restricting trade is the 'necessity test'. However, this test also has its limitations, as there are practical complexities and difficulties in enlisting legitimate objectives. The ruling on the gambling dispute in the WTO has brought out that domestic regulatory measures can have the unintended consequence of restricting market access of service suppliers. Hence, it is important that countries commit to transparent and qualitative regulatory measures. The applicability o domestic regulations remains an issue. The issue is whether these discipline can be applied horizontally notwithstanding the commitments undertaken b members or whether only those sectors where commitments have been un dertaken are sought to be covered. There is also the question of levels of gov ernment to which disciplines on domestic regulations can apply—whether the should apply only at the federal level or at state and local levels. On the whole there is a need for all countries to preserve regulatory freedom while ensurin that regulations do not create unnecessary barriers to trade.

9. What are the basic obligations under the GATS?

The GATS has three elements: the main text containing general obligatior and disciplines; annexes dealing with rules for specific sectors; and specif

commitments of individual countries to provide access to their markets, including indications of where countries are temporarily not applying the MFN principle of non-discrimination.

Obligations contained in the GATS may be categorised into two broad groups: general obligations, which apply directly and automatically to all members and services sectors, and commitments concerning market access and national treatment in specifically designated sectors. Such commitments are laid down in individual country schedules whose scope may vary widely between members. The relevant terms and concepts are similar but not necessarily identical to those used in the General Agreement on Tariffs and Trade (GATT); for example, national treatment is a general obligation in goods trade and not negotiable as under the GATS.

(a) General Obligations

MFN Treatment: Under Article II of the GATS, members are required to extend immediately and unconditionally to services or services suppliers of all other members 'treatment no less favourable than that accorded to like services and services suppliers of any other country'. This is known as the MFN treatment. This amounts to a prohibition, in principle, of preferential arrangements among groups of members in individual sectors or of reciprocity provisions, which confine access to benefits to trading partners granting similar treatment.

Derogations or exceptions are possible in the form of the so-called Article II-Exemptions. Members were allowed to seek such exemptions before the GATS entered into force. New exemptions can only be granted to new members at the time of accession or, in the case of current members, by way of a waiver under Article IX (3) of the Marrakesh Agreement that established the WTO. All exemptions are subject to review. Further, the GATS allows groups of members to enter into economic integration agreements that liberalise trade in services between or among the parties to such an agreement, provided certain conditions are met.

Transparency: GATS members are required, inter alia, to publish all measures of general application and establish national enquiry points mandated to respond to other members' information requests.

Other generally applicable obligations include the establishment of administrative review and appeals procedures and disciplines on the operation of monopolies and exclusive suppliers.

(b) Specific Commitments

Market Access: Is a negotiated commitment in specified sectors. It may be made subject to various types of limitations that are enumerated in Article XVI(2). For example, limitations may be imposed on the number of services suppliers, service operations or employees in the sector, the value of transactions, the legal form of the service supplier or the participation of foreign capital.

National Treatment: A commitment to national treatment implies that the member concerned does not operate discriminatory measures benefiting domestic services or service suppliers. The key requirement is not to modify, in law or in fact, the conditions of competition in favour of the member's own service industry. Again, the extension of national treatment in any particular sector may be made subject to conditions and qualifications.

Members are free to tailor the sector coverage and substantive content of such commitments as they see fit. The commitments thus tend to reflect national policy objectives and constraints, overall and in individual sectors. While some members have scheduled less than a handful of services, others have assumed market access and national treatment disciplines in over 120 out of a total of 160-odd services.

The existence of specific commitments triggers further obligations concerning, inter alia, the notification of new measures that have a significant impact on trade and the avoidance of restrictions on international payments and transfers.

10. What is the 'request-offer' approach and how does it differ from the proposed 'benchmarking approach'?

At present, the GATS has a positive list approach under which countries list only the commitments they are willing to undertake. Moreover, the negotiations are on a bilateral request-and-offer basis, and countries have the right to make offers according to what they consider appropriate in their national interests. These principles are important, for they allow member states to determine for themselves the breadth and depth of services liberalisation they are ready to undertake in the current negotiations.

It was being noticed that the bilateral request-offer negotiating method has not achieved results in terms of liberalisation commitments of developing countries, and hence, a new multilateral 'complementary' method that could benchmark the extent of members' commitments is being proposed by the

EC, Japan, Australia, Switzerland, South Korea, Chinese Taipei and New Zealand. Under the new proposed mechanism, members would be required to adhere to a certain 'benchmark' or attain a certain score. Some proposals advocate that members be required to make commitments in at least a specified number of sectors from a list of sectors to be agreed upon, and also that the present levels of actual liberalisation be 'bound' by having them committed in the GATS. Other proposals include a methodology for giving quantitative scores to countries for the number of sectors committed and the extent of restrictions placed or not placed on the liberalisation in the various modes.

While this might accelerate the pace of services liberalisation before the Hongkong Ministerial, the downside is that adoption of these methods would change the very nature of the services agreement and negotiating methods, and also remove the policy flexibilities now available to the countries to choose their pace and degree of liberalisation in the various sectors. Yet, mechanisms can be evolved to build in progressivity, while preserving the basic GATS architecture. There is a need to refocus on the development-oriented criteria and use them as benchmarks and baselines for effectively assessing the quality of offers and the progress of negotiations and establishing the key elements of a pro-development outcome.

11. What are the sectors and modes of supply of particular interest to India and other developing countries?

Primary interests of India in GATS negotiations lie in Modes 1 and 4. Liberalisation in Mode 1 offers significant gains for India considering the increasing growth and potential in delivering services through electronic means. India's IT services exports have grown from under US$ 500 million in 1994-95 to over US$ 12 billion in 2003-04. Offshoring has become the dominant mode of delivery of software exports, accounting for 58 percent of all exports. Even within business process outsourcing (BPO), India has moved from providing only low-end back-office services to more integrated and higher-end services like customer care and product development. This is a development facing significant resentment from the developed countries.

India's broad strategy under Mode 1 should be to pre-empt further protectionism in outsourcing, obtain secure and predictable market access in IT-enabled Services (ITeS), back-office operations etc. India's proposal should be to seek unrestricted market access and national treatment under horizontal commitments for all services supplied on a cross-border basis. In Mode 1, it is important to find out how to lock in or commit the services liberalised autonomously by different countries and how to bring in newer services. In this mode, how-

ever, the revised offers submitted by the US, the EC and Canada are disappointing as there is no meaningful improvement from the previous offers.

The other mode of supply of particular interest to India and other developing countries is Mode 4, i.e. the movement of natural persons. Global gains from liberalisation in Mode 4 are expected to range from US$ 150 billion to US$ 200 billion. It is estimated that gains from trade in services and, in particular, Mode 4 could be more than the gains from the entire Doha work programme put together. Benefits from the liberalisation of Mode 4 include efficiency gains and enhanced growth stimulating further investment in education, skills and human capital. One of the biggest and evident gains from the liberalisation of Mode 4 particularly for developing countries is in the form of increased remittances. India, in particular, has a large pool of well-qualified professionals in the services sectors like computer and related services, education, audio-visual services, accountancy, architecture, construction and engineering, health and consultancy.

In Mode 4, presently two categories are recognised – business visitors and intra-corporate transferees. The need is to have two new categories – contrac-tual service suppliers and independent service suppliers. These two categorie should be delinked from Mode 3 (commercial presence). The EC and countrie such as Australia and New Zealand have made limited offers in de-linking Mode 4 from commercial presence. In fact, in the revised offers, the sectoral coverage remains poor, duration of stay is inadequate, and economic needs tests (ENT remain. Though from the point of view of real poverty reduction, movement o semi-skilled or low-skilled people is important, given the practical realities, it i important that negotiations on Mode 4 also focus on temporary movement i the highly-skilled and professional categories, which may also have a povert alleviating impact, for instance by remittances from skilled workers.

From the Indian perspective two sets of issues on Mode 4 are very importan – market access including administrative procedures and domestic regulation like qualification requirement procedures. The proposed adoption of commo categories is also important. Similarly, the proposal of service provider vis (SPV) is also worth exploring.

However, multilateral progress on Mode 4 is likely to be slow. Given this stat of affairs, negotiations on Mode 4 will be marked by various trade-offs suc as wider-versus-deeper commitments and potential loss of autonomy wi stronger disciplines in domestic regulation. The best way forward for India to focus on widening of horizontal commitments with supplementary deepe ing through sectoral commitments. India should also continue discussions GATS disciplines relevant to Mode 4.

Section II

Glossary

GATS: The WTO General Agreement on Trade in Services. It is the first multilateral agreement to provide legally enforceable rights to trade in all services. It covers about 12 service sectors and 155 sub-sectors. Members choose services and limit the degree to which they provide market access and national treatment commitments.

Contractual Services Suppliers (CSS): Refers to those who provide services on a contractual basis. One of India's main demands is for inclusion of this category in the liberalisation offers from its trading partners.

Modes of Supply: This refers to the means of delivering services to foreign consumers. Modes of supply are defined based on the origins of the service supplier and the consumer, and the type of territorial presence that both have when the service is delivered. There are four Modes of supply: (1) cross-border supply; (2) consumption abroad; (3) commercial presence; and (4) presence of natural persons

Mode 1 - Cross-Border Supply: The service is delivered within the territory of the consumer from the territory of the service supplier. When most people think of trade in service, they are thinking of Mode 1. Cross-border supply may entail the conveyance by mail, telecommunication or the physical movement of merchandise embodying a service (e.g. a diskette storing information) from one country to another. The service supplier is not present in the territory where the service is delivered.

Mode 2 - Consumption Abroad: The consumer receives a service outside his country either by moving or being situated abroad. Repair services done on equipment shipped to a different country, foreign exchange students, people seeking medical treatment abroad and tourism fit into Mode 2.

Mode 3 - Commercial Presence: A service supplier establishes any type of business or professional enterprise in the foreign market for supplying a service. Practically, the mode involves granting a right to a foreign interest to

establish an investment within the territory of another country. Thus, commercial presence includes establishing corporate subsidiaries, trusts, joint ventures, partnerships, sole proprietorships, associations, representative offices or branches or acquiring such entities. In brief, it means right of establishment, that is, through foreign direct investment.

Mode 4 - Movement of Natural Persons: The service is delivered by an individual acting alone or as an employee of a service supplier by being present in a foreign market to provide the service. For example, a US accounting firm that provides accounting services in Italy by sending its employees in the U to Italy (to either live or visit temporarily) is delivering its service through the 'presence or movement of natural persons'.

Commitment: This is the legal term describing the scope of the specific obligation a country enters into. For instance, for any specific sector, a country's commitments will be described in terms of market access granted in the various modes and in terms of any exceptions to requirements such as national treatment. A country's commitments are listed in national schedules, which a annexed to the text of overarching obligations indicated in the international service agreement. See bound commitments, unbound commitments, horizontal commitments, and sector-specific commitments.

Bound Commitment: A commitment that cannot be rolled back to be le comprehensive. Only further liberalisation is permitted in a bound sector (unless an agreed compensation is paid).

Horizontal Commitment: A commitment that applies to multiple services. An example is the obligation to provide MFN treatment in the GATS. Regardless of whether a country has agreed to subject a service sector to GATS disciplines, it is bound to MFN treatment for all services sectors.

Sector-Specific Commitment: This is a commitment that applies only the sector, to the Modes and in accordance with the terms listed in a countr national schedules. For instance, it indicates either the absence or the existence of market access, national treatment and other limitations with respe to a specific service sector.

General Obligations: Obligations which should be applied to all services sectors after the entry of the agreement into force.

Initial Commitments: Trade-liberalising commitments in services wh members are prepared to make early on.

National **Schedules:** The equivalent of tariff schedules in GATT, laying do

the commitments accepted – voluntarily or through negotiation – by WTO members.

Offer: A country's proposal for further liberalisation.

Protocols: Additional agreements attached to the GATS. The Second Protocol deals with the 1995 commitments on financial services. The Third Protocol deals with movement of natural persons.

Schedule: The 'Schedule of Specific Commitments', a WTO member's list of commitments regarding market access and bindings regarding various obligations under the GATS.

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